

By: González of Dallas

H.B. No. 4594

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain possession offenses under the Texas Controlled Substances Act; changing eligibility for and conditions of community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 42A.551(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a) Except as otherwise provided by Subsection (b) [~~or (c)~~], on conviction of a state jail felony under Section [~~481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(3), or~~ 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(d) On conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subsection (a) or defined as a possession offense under Subchapter L-1, and subject to Subsection (e), the judge may:

(1) suspend the imposition of the sentence and place the defendant on community supervision; or

(2) order the sentence to be executed:

(A) in whole; or

(B) in part, with a period of community supervision to begin immediately on release of the defendant from

1 confinement.

2 SECTION 2. Chapter 42A, Code of Criminal Procedure, is  
3 amended by adding Subchapter L-1 to read as follows:

4 SUBCHAPTER L-1. COMMUNITY SUPERVISION FOR CERTAIN POSSESSION  
5 OFFENSES

6 Art. 42A.581. DEFINITION. In this subchapter, "possession  
7 offense" means an offense under Section 481.115, 481.1151, 481.116,  
8 481.1161, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or  
9 485.031, Health and Safety Code, that is punishable as a felony of  
10 the third degree or state jail felony.

11 Art. 42A.582. PLACEMENT ON COMMUNITY SUPERVISION;  
12 EXECUTION OF SENTENCE. (a) On conviction of a possession offense,  
13 the judge shall suspend the imposition of the sentence and place the  
14 defendant on community supervision, except that the judge may order  
15 the sentence to be executed if:

16 (1) for a state jail felony, the defendant has been  
17 previously convicted of a possession offense; or

18 (2) for a felony of the third degree:

19 (A) the judge determines by a preponderance of  
20 the evidence that the defendant:

21 (i) is a danger to the safety of others; or

22 (ii) possessed the substance with the  
23 intent to deliver the substance;

24 (B) the defendant has been previously convicted  
25 of a felony offense other than:

26 (i) a possession offense; or

27 (ii) a felony offense punished under

1 Section 12.44, Penal Code;

2 (C) the defendant is convicted in the same  
3 proceeding of an additional felony offense, other than:

4 (i) a possession offense; or

5 (ii) a felony offense punished under  
6 Section 12.44, Penal Code; or

7 (D) the judge determines by clear and convincing  
8 evidence, based on an evidence-based drug and alcohol assessment,  
9 that the defendant is unlikely to benefit from participation in a  
10 course of treatment in a drug treatment program or facility, and the  
11 defendant has been previously:

12 (i) convicted on two or more occasions of a  
13 possession offense; or

14 (ii) discharged from a drug court program  
15 established under Chapter 123, Government Code, after failing to  
16 successfully complete the program.

17 (b) A judge who makes a determination described by  
18 Subsection (a)(2)(A) or (D) shall enter the reasons for making that  
19 determination in the record of the proceeding.

20 (c) The judge may suspend in whole or in part the imposition  
21 of any fine imposed on a conviction if a defendant is placed on  
22 community supervision under this subchapter.

23 Art. 42A.583. CONDITIONS OF COMMUNITY SUPERVISION. (a) A  
24 court granting community supervision under this subchapter shall  
25 require as a condition of community supervision that the defendant:

26 (1) submit to an evidence-based risks and needs  
27 screening and evaluation procedure approved by the community

justice assistance division of the Texas Department of Criminal Justice, including a procedure developed under Section 509.003(d), Government Code;

(2) if the evaluation indicates a need for treatment, participate in a prescribed course of treatment in a drug treatment program or facility:

(A) licensed or approved by the Department of State Health Services; or

(B) that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice; and

(3) pay a fee to cover all or part of the cost of the course of treatment based on the defendant's ability to pay.

(b) A course of treatment under Subsection (a)(2) may include:

(1) treatment in a faith-based program;

(2) outpatient treatment;

(3) halfway house treatment;

(4) narcotic replacement therapy prescribed by a physician;

(5) drug education or prevention courses; and

(6) inpatient or residential drug treatment to address special detoxification, relapse, or severe dependence issues.

(c) In referring a defendant to a course of treatment under Subsection (a)(2) and imposing conditions for participation in the course of treatment, the judge shall order the defendant to participate in the level of treatment that the evaluation indicates

is appropriate for the defendant to achieve:

(1) the outcome objectives prescribed by the drug treatment program or facility; and

(2) the recommendations of a drug treatment professional.

(d) A court granting community supervision under this subchapter may require as a condition of that community supervision, in addition to any required participation in a course of treatment under Subsection (a)(2) and other appropriate conditions, that the defendant participate in:

(1) vocational training;

(2) family counseling;

(3) literacy training; or

(4) community service.

Art. 42A.584. VIOLATION OF CONDITIONS OF COMMUNITY SUPERVISION. (a) Notwithstanding Article [42A.751](#)(b), if a defendant placed on community supervision under this subchapter violates the terms of that supervision by committing another possession offense or a misdemeanor offense involving the possession of a controlled substance or by violating any drug treatment-related condition of community supervision, the judge may:

(1) use graduated sanctions and incentives offered to a defendant by the community supervision and corrections department supervising the defendant or the courts served by that department, including:

(A) global positioning or another form of

1 electronic monitoring;

2 (B) mental health treatment or cognitive and  
3 behavioral programs;

4 (C) alcohol or substance abuse monitoring and  
5 testing;

6 (D) faith-based community programs and  
7 resources, including mentoring programs;

8 (E) placing the defendant under the supervision  
9 of a supervision officer with a reduced or specialized caseload and  
10 subjecting the defendant to increased home visits and field  
11 contacts, if sufficient resources are available;

12 (F) strategies to reduce the number of technical  
13 violations committed by the defendant; and

14 (G) increased coordination between the court and  
15 the community supervision and corrections department supervising  
16 the defendant; and

17 (2) revoke the community supervision of the defendant  
18 if the judge determines by a preponderance of the evidence that the  
19 defendant:

20 (A) poses a danger to the safety of others; or

21 (B) is unlikely to benefit from a course of  
22 treatment in a drug treatment program or facility.

23 (b) A judge who modifies a defendant's conditions of  
24 community supervision in response to the defendant's commission of  
25 an offense or violation of a treatment-related condition of  
26 community supervision under Subsection (a) shall consider imposing  
27 one or more of the following additional conditions of community

1 supervision:

- 2 (1) intensified drug treatment;
- 3 (2) vocational training;
- 4 (3) family counseling;
- 5 (4) literacy education;
- 6 (5) community service;
- 7 (6) intensive supervision; and
- 8 (7) confinement under Subchapter M in an intermediate

9 sanction facility operated by or under contract with the Texas  
10 Department of Criminal Justice for a period not to exceed 120 days.

11 Art. 42A.585. DETERMINATION OF BENEFIT OF TREATMENT. In  
12 making a determination under this subchapter as to whether a  
13 defendant is unlikely to benefit from participation in a course of  
14 treatment in a drug treatment program or facility, the judge shall  
15 consider whether the defendant has previously:

16 (1) committed a serious violation of the rules of a  
17 drug treatment program or facility; or

18 (2) repeatedly committed violations of the rules of a  
19 drug treatment program or facility to an extent that inhibited the  
20 defendant's ability to function in the program or facility.

21 Art. 42A.586. DISMISSAL. (a) After successful completion  
22 of a term of community supervision imposed under this subchapter,  
23 including completion of any required course of treatment in a drug  
24 treatment program or facility, a defendant may petition the court  
25 for dismissal of the charges.

26 (b) If the judge, after providing notice and giving  
27 attorneys for the defendant and the state an opportunity to be

1 heard, determines that the defendant substantially complied with  
2 the conditions of community supervision and successfully completed  
3 any required course of treatment, the judge shall discharge the  
4 defendant, set aside the verdict or permit the defendant to  
5 withdraw the plea, and dismiss the accusation, complaint,  
6 information, or indictment in the manner provided by Article  
7 [42A.701](#).

8 SECTION 3. Subchapter E-1, Chapter [411](#), Government Code, is  
9 amended by adding Section 411.0732 to read as follows:

10 Sec. 411.0732. PROCEDURE FOR COMMUNITY SUPERVISION  
11 FOLLOWING CONVICTION; SET-ASIDE CONVICTIONS FOR CERTAIN FELONY  
12 POSSESSION OFFENSES. (a) This section applies only to a person  
13 who, on conviction of a possession offense, is placed on community  
14 supervision under Subchapter L-1, Chapter [42A](#), Code of Criminal  
15 Procedure, and with respect to whom the conviction is subsequently  
16 set aside by the court under Article [42A.701](#)(f) of that chapter.

17 (b) Notwithstanding any other provision of this subchapter  
18 or Subchapter F, a person described by Subsection (a) who satisfies  
19 the requirements of Section [411.074](#) may petition the court that  
20 placed the person on community supervision for an order of  
21 nondisclosure of criminal history record information under this  
22 section.

23 (c) After notice to the state, an opportunity for a hearing,  
24 and a determination that the person is entitled to file the petition  
25 and that issuance of the order is in the best interest of justice,  
26 the court shall issue an order prohibiting criminal justice  
27 agencies from disclosing to the public criminal history record



1 information related to the offense giving rise to the community  
2 supervision.

3 (d) A person may petition the court that placed the person  
4 on community supervision for an order of nondisclosure of criminal  
5 history record information under this section only after the fifth  
6 anniversary of the date the conviction is set aside.

7 SECTION 4. Chapter 509, Government Code, is amended by  
8 adding Section 509.018 to read as follows:

9 Sec. 509.018. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH  
10 DRUG TREATMENT. (a) Not later than December 1 of each year, the  
11 Texas Department of Criminal Justice shall study and report to the  
12 legislature on the effectiveness and financial impact to the state  
13 during the preceding state fiscal year of placing defendants on  
14 community supervision with drug treatment for a felony possession  
15 offense under Subchapter L-1, Chapter 42A, Code of Criminal  
16 Procedure.

17 (b) The study and report must include an analysis of:

18 (1) the implementation of Subchapter L-1, Chapter 42A,  
19 Code of Criminal Procedure, including the amount of cost savings  
20 the state realizes through that implementation;

21 (2) the adequacy of funding available for operation of  
22 the programs described by Subchapter L-1, Chapter 42A, Code of  
23 Criminal Procedure;

24 (3) the effect of implementing Subchapter L-1, Chapter  
25 42A, Code of Criminal Procedure, with respect to:

26 (A) incarceration costs incurred by the state and  
27 local governments, including the cost of constructing prisons and

1 jails;

2 (B) the recidivism rate among defendants placed  
3 on community supervision under Subchapter L-1, Chapter 42A, Code of  
4 Criminal Procedure, compared with other defendants; and

5 (C) the number of defendants placed on community  
6 supervision under Subchapter L-1, Chapter 42A, Code of Criminal  
7 Procedure, who utilize state welfare benefits, compared with other  
8 defendants; and

9 (4) other effects of or issues with implementing  
10 Subchapter L-1, Chapter 42A, Code of Criminal Procedure, that are  
11 identified by the Texas Department of Criminal Justice.

12 SECTION 5. Article 42A.551(c), Code of Criminal Procedure,  
13 is repealed.

14 SECTION 6. (a) In a criminal action under Section 481.115,  
15 481.1151, 481.116, 481.1161, 481.117, 481.118, 481.119(b),  
16 481.121, 483.041(a), or 485.031, Health and Safety Code, pending on  
17 or commenced on or after the effective date of this Act, for an  
18 offense committed before the effective date of this Act, the  
19 defendant, if adjudged guilty, shall be assessed the punishment  
20 under Subchapter L-1, Chapter 42A, Code of Criminal Procedure, as  
21 added by this Act, if the offense is a possession offense described  
22 by Article 42A.581, Code of Criminal Procedure, as added by this  
23 Act, and the defendant meets the eligibility requirements under  
24 that subchapter and other law and so elects by written motion filed  
25 with the trial court before the sentencing hearing begins.

26 (b) If the defendant does not make the election under  
27 Subsection (a) of this section, punishment is governed by the law in

1 effect on the date the offense was committed, and the former law is  
2 continued in effect for that purpose.

3       SECTION 7. The change in law made by Section 411.0732,  
4 Government Code, as added by this Act, applies to a person whose  
5 conviction for a possession offense is set aside under Article  
6 [42A.701](#)(f), Code of Criminal Procedure, on or after the effective  
7 date of this Act, regardless of whether the offense for which the  
8 person was convicted was committed before, on, or after the  
9 effective date of this Act.

10       SECTION 8. The Texas Department of Criminal Justice shall  
11 submit to the legislature the initial report required by Section  
12 509.018, Government Code, as added by this Act, not later than  
13 December 1, 2020.

14       SECTION 9. This Act takes effect September 1, 2019.